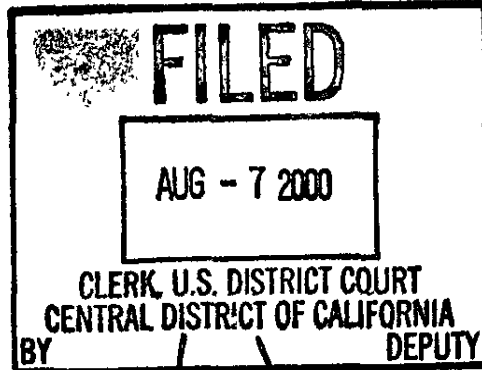
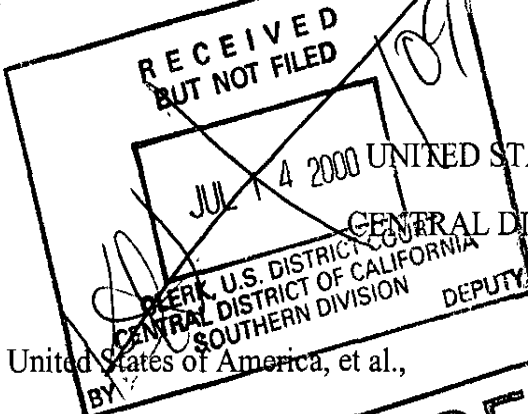


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10 United States of America, et al.,

11 Plaintiff,

12 v.

13 Montrose Chemical Corporation of
 14 California, et al.,

15 Defendants

16 And Related Counterclaims, Cross-Claims
 17 and Third-Party Actions.

18 CASE NO. CV 90 3122-R

19 STATEMENT OF UNCONTROVERTED
 20 FACTS AND CONCLUSIONS OF LAW IN
 21 SUPPORT OF DEFENDANT MONTROSE
 22 CHEMICAL CORPORATION OF
 23 CALIFORNIA'S MOTION FOR PARTIAL
 24 SUMMARY JUDGMENT REGARDING
 25 OVERSIGHT COSTS INCURRED BY EPA

Date: August 7, 2000
 Time: 10:00 a.m.
 Place: Courtroom 8

THIS CONSTITUTES NOTICE OF ENTRY
 AS REQUIRED BY FRCP, RULE 77(d).

26 Pursuant to Local Rule 7.14.1 of the Local Rules of the United States District
 27 Court for the Central District of California, defendant Montrose Chemical Corporation of
 28 California ("Montrose") respectfully submits this Statement of Uncontroverted Facts and
 29 Conclusions of Law in Support of Montrose's Motion for Partial Summary Judgment Regarding
 30 Oversight Costs Incurred by EPA.

STATEMENT OF UNCONTROVERTED FACTS

- 31 A. The Second Amendment To Administrative Order On Consent, U.S. Docket No.
85-04, Governs Montrose's Obligation To Reimburse EPA For Oversight Costs
Incurred After August 11, 1989

32 Docketed
 33 Copies NTC Sent
 34 JS - 5 / JS - 6
 35 JS - 2 / JS - 3

36 LATHAM & WATKINS
 ATTORNEYS AT LAW
 SAN FRANCISCO

1 1. The United States Environmental Protection Agency ("EPA") and
2 Montrose have entered into the Second Amendment to Administrative Order on Consent, U.S.
3 Docket No. 85-04 (hereinafter "Second AOC"), whose effective date is July 11, 1989.
4 Raushenbush Declaration, Exhibit 1.

5 2. Pursuant to the Second AOC, Montrose agreed to "reimburse the
6 Hazardous Substances Superfund for future oversight costs, including EPA's indirect costs,
7 incurred by EPA" to oversee and review Montrose's work under the AOC within thirty days of
8 receiving an EPA annual accounting of such costs. Raushenbush Declaration, Exhibit 1 at 15-
9 16.

10 4. Pursuant to the Second AOC: "At the end of each calendar quarter, EPA
11 shall submit to Montrose and [sic] accounting of all oversight costs based on Region IX
12 accounting documentation. . . ." Raushenbush Declaration, Exhibit 1 at 15-16.

13 5. Pursuant to the Second AOC, EPA agreed to "submit to Montrose, no
14 more than annually, an accounting of all oversight costs expended during the past calendar year
15 based on accounting documentation from EPA headquarters." Raushenbush Declaration, Exhibit
16 1 at 15-16.

17 6. Pursuant to the Second AOC: "Failure to include all relevant oversight
18 costs in the submittal at the end of any particular annual accounting will not preclude the EPA
19 from seeking such costs in any subsequent year, *up to six (6) years subsequent to EPA's*
20 *incurrence of such costs.*" Raushenbush Declaration, Exhibit 1 at 15-16 (Emphasis added.)

21 B. Since November 7, 1991, EPA Has Failed To Submit To Montrose Either
22 Quarterly Accountings Of Its Oversight Costs or The Annual Accountings
23 Required By The Second AOC

24 1. On November 7, 1991, EPA sent a letter to Montrose demanding payment
25 in the amount of \$324,612.37 for "costs incurred by EPA for CERCLA response activities" at the
26 Montrose site from August 11, 1989 to December 31, 1990. Raushenbush Declaration, Exhibit

27 2.

28 2. Montrose paid the \$324,612.37 demanded by the EPA. Raushenbush

1 Declaration, Exhibit 3.

2 3. The EPA has not provided Montrose with any quarterly accountings or
3 any annual accountings of oversight costs subject to the Second AOC since November 7, 1991.

4 Raushenbush Declaration, Exhibit 3.

5 CONCLUSIONS OF LAW

6 1. Under the Second AOC, EPA has waived its right to seek reimbursement of
7 oversight costs incurred from January 1, 1991 through six years prior to any future date that EPA
8 submits to Montrose the accountings required by the Second AOC.

9 2. EPA is not entitled to seek any prejudgment interest for oversight costs subject to
10 the Second AOC.

11
12 Dated: July 13, 2000

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13
14
15
16 By Richard W. Raushenbush
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Cross-Claimant MONTROSE CHEMICAL
CORPORATION OF CALIFORNIA

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25 Real 8-7-00
26 U.S.D.J.
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28

PROOF OF SERVICE

I am employed in the County of San Francisco, State of California. I am over the age of 18 years and not a party to this action. My business address is Latham & Watkins, 505 Montgomery Street, Suite 1900, San Francisco, CA 94111-2562.

On **July 13, 2000**, I served the following document described as:

**STATEMENT OF UNCONTROVERTED FACTS AND CONCLUSIONS OF LAW
IN SUPPORT OF DEFENDANT MONTROSE CHEMICAL CORPORATION OF
CALIFORNIA'S MOTION FOR PARTIAL SUMMARY JUDGMENT
REGARDING OVERSIGHT COSTS INCURRED BY EPA**

by serving a true copy of the above-described document in the following manner:

BY U.S. MAIL

I am familiar with the office practice of Latham & Watkins for collecting and processing documents for mailing with the United States Postal Service. Under that practice, documents are deposited with the Latham & Watkins personnel responsible for depositing documents with the United States Postal Service; such documents are delivered to the United States Postal Service on that same day in the ordinary course of business, with postage thereon fully prepaid. I deposited in Latham & Watkins' interoffice mail a sealed envelope or package containing the above-described document and addressed as set forth below in accordance with the office practice of Latham & Watkins for collecting and processing documents for mailing with the United States Postal Service:

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I declare that I am employed in the office of a member of the Bar of, or permitted to practice before, this Court at whose direction the service was made and declare under penalty of perjury that the foregoing is true and correct.

Executed on **July 13, 2000**, at San Francisco, California.


Sandra Nelson

UNITED STATES AND STATE OF CALIFORNIA v. MONTROSE CHEMICAL
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